

REMARKS

In the Office Action mailed May 10, 2007, applicants' election with traverse of Group I, claims 1-12 was acknowledged. Claims 1-12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Saito et al., Reduction of Infarct Volume by Halothane: Effect on Cerebral Blood Flow or Perifocal Spreading Depression-Like Depolarizations, Journal of Cerebral Blood Flow and Metabolism, 1997, vol. 17, pp 857-864 in view of Gray et al. (GB2350297).

While applicants traverse the rejection of the claims, in order to advance the application to allowance claim 1 has been amended in a manner believed to overcome the rejection. In addition, new claim 13 has been added which is fully supported by the specification. Claim 1 has been amend to recite that the halogenated volatile anesthetic (HVA) is administered at a sub-anesthetic amount effective to improve the tissue's resistance to or tolerance of the ischemic event. First, it is clear that Saito et al. administered anesthetic dosages of halothane in the study. Contrary to the indication in the Office Action, the difference in administering an anesthetic amount of halothane would not be considered routine optimization of the dosage to administer sub-anesthetic amounts of an HVA. Saito et al, administered anesthetic amounts of halothane and found protective properties relating to brain ischemic events. (See, entire reference, Methods section in particular). They concluded that the protective benefits may depend on cerebrovascular and electrophysiologic influences. (See last sentence of Abstract). Saito et al. even suggest that the protective properties of the HVA may result from the suppression of neuronal activity, i.e. the anesthetic effect. (See paragraph 4 of Discussion section). They also note that compared with the awake state, HVAs can reduce brain damage. (See paragraph 2 of Discussion section). Accordingly, there is no teaching or suggestion in the prior art that sub-anesthetic amount would provide the claimed benefit. Indeed, not only is there no teaching,

suggestion or motivation for administering sub-anesthetic amounts, applicants submit that it would not be expected, indeed it would have been surprising, that sub-anesthetic amounts would provide the claimed benefits especially since electrophysiologic influences may be involved. Accordingly, applicants respectfully request reconsideration and withdrawal of the rejection of claim 1.

Claims 2, 4, 5, 7-13 depend from claim 1 and should be allowable for the same reason given above. In addition, these claims are patentably distinct and recite features not taught or suggested by the prior art. In particular with regard to claims 9 and 10, it was indicated in the Office Action that Saito et al. teaches that the cats were treated with halothane after the MCAO. In actuality, the halothane was administered before and continued thereafter up to 16 hours. Consequently, Saito et al. cannot teach or suggest that administering halothane as a bolus administration as in claim 10 or only after the onset of the ischemic event as in claim 9 provides the claimed benefit. With regards to claim 5 and newly added claim 13, Saito et al. only disclose MCAO as one type of induced ischemic event. There is no teaching or suggestion that administration of a sub-anesthetic amount provides the claimed benefits with respect to other ischemic events and especially with other tissue types. Taking in consideration that the benefits of an anesthetic amount of HVA for brain ischemia may be due to suppression of neuronal activity and/or cerebrovascular influences, it would not have been expected that a sub-anesthetic amount could provide the benefits to other tissue type such as heart tissue.

For at least the reasons given above, applicants submit that the subject matter of the presently amended claims is not taught or suggested by the prior art and as a result, the claims are now in condition for allowance. Accordingly, applicants respectfully request reconsideration and withdrawal of the rejections of the claims and that a Notice of Allowance be issued.

A fee of one hundred twenty dollars (\$120.00) is being paid electronically for a one-month extension of time fee. It is believed that no other fees are due with this reply. However, if any fee should be required, the Commissioner is authorized to charge our Deposit Account No. 50/1039.

Respectfully submitted,

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